United States Department of Labor Employees' Compensation Appeals Board

Y.J., Appellant	
and)
DEPARTMENT OF DEFENSE, CONSTRUCTION SUPPLY CENTER, Columbus, OH, Employer)))) _)
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge PATRICIA H. FITZGERALD, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2020 appellant filed a timely appeal from a January 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant's AB-1 Form notes that she is appealing from a purported "April 17, 2020" OWCP merit decision. However, the record is devoid of any such decision. The only adverse final decision over which the Board may exercise jurisdiction is OWCP's January 23, 2020 merit decision. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

² 5 U.S.C. § 8101 et seq.

³ The Board notes that, following the January 23, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 18, 2019; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after June 18, 2019 due to the accepted March 18, 2015 employment injury.

FACTUAL HISTORY

This case was previously before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 20, 1985 appellant, then a 45-year-old supply clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 1985 she sustained back and right foot injuries when she tripped in a hole and fell in an employing establishment parking lot while in the performance of duty. OWCP accepted the claim for a lower back strain and paid her compensation for intermittent periods of disability commencing April 8, 1985. In May 1986, appellant experienced a recurrence of the original injury. She was terminated from her employment effective July 10, 1986. OWCP subsequently determined that the physical aspect of appellant's claim contained in the statement of accepted facts (SOAF) had resolved, but expanded its acceptance of the claim to include chronic pain disorder. It subsequently placed appellant on its periodic compensation rolls.

In September 11, October 11, and November 15, 2018 reports, Dr. Nikesh Batra, a Board-certified pain medicine specialist, provided an assessment of sprain of other parts of the lumbar spine and pelvis. In his September 11, 2018 report, he concluded that appellant had chronic low back pain due to lumbar disc disease and he continued her on pain medication management.

On December 10, 2018 OWCP referred appellant to Dr. James R. Hawkins, a Board-certified psychiatrist, for a second opinion examination. It requested that he administer the Minnesota Multiphasic Personality Inventory (MMPI) psychological testing and perform a mental status examination to evaluate whether she continued to have residuals/disability causally related to her work-related psychiatric diagnosis (chronic pain disorder) that was based solely on her physical work-related diagnosis (low back strain) that was considered administratively resolved. The accompanying SOAF was dated November 14, 2012.

In a January 8, 2019 report, Dr. Hawkins indicated that he had reviewed the SOAF and appellant's medical history and records. He reported that the MMPI psychological testing was invalid and likely consistent with exceptionally significant malingering as she had embellished all of her physical and psychological symptoms. Dr. Hawkins also reported mental status examination findings, noting that appellant exaggerated all of her psychological symptoms and was not truthful with some of her documented personal history. Appellant was also angry of being sent to this examination. Dr. Hawkins diagnosed chronic pain disorder and major depressive disorder, single episode, mild, and chronic. He indicated that appellant related all of her

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⁴ Docket No. 86-1034 (issued June 12, 1986).

complaints to a lumbar strain as a result of the fall in 1985. Dr. Hawkins opined that it was unlikely that lumbar strain could cause the plethora of symptoms she reported. He opined that, while appellant did suffer from major depressive disorder, single episode, mild, and chronic, this was unrelated to the resolved physical work-related condition. Dr. Hawkins found no evidence that she was depressed because of the 33-year-old industrial injury of lumbar strain, which generally resolved within six months, and there were no psychiatric residuals as a result of the accepted injury. He noted that he was aware that the work-related diagnosis of low back strain was considered administratively resolved, but appellant did not mention this during the interview and became angry. Dr. Hawkins stated that her history matched the information noted on the SOAF until 1985 when the injury actually occurred. After that appellant's history did not match the SOAF information, highly suggesting malingering. Dr. Hawkins concluded that there were no psychiatric residuals as a result of the work injury and that she was capable of returning to her former position without psychological restrictions. In a work capacity evaluation (Form OWCP-5c) dated January 7, 2018, he opined that appellant could perform her usual work eight hours a day without medical restrictions.

Dr. Batra continued to provide progress reports regarding appellant's condition of "sprain of other parts of lumbar spine and pelvis" and his management of her pain medication.

On February 8, 2019 OWCP prepared an updated SOAF. On February 11, 2019 it referred appellant to Dr. Ralph G. Rohner, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. OWCP requested that he evaluate whether she continued to have residuals/disability causally related to her accepted March 18, 1985 employment injury.

In a March 12, 2019 report, Dr. Rohner indicated that he had reviewed the SOAF and appellant's medical history and records. He noted that she had related that she had low back pain which had progressed as she aged. Dr. Rohner presented examination findings, noting that appellant was not magnifying her symptoms, but was 79 years old with multiple medical and psychiatric issues and a very poor memory. He diagnosed low back strain and complex pain disorder, which he opined were not residuals of the allowed diagnoses. Dr. Rohner noted that there was no documentation in the records provided that would justify that residuals of that injury had persisted for the past 34 years or would indicate any involvement in his examination findings. He opined that appellant's significant findings on examination were due to the aging phenomenon and not her work injury. Dr. Rohner further opined that she had no additional diagnoses that were caused, aggravated, accelerated, or precipitated by the March 18, 1985 work injury. Rather, appellant's evaluation was age related. Dr. Rohner opined that, based on her age-related medical examination, she was unable to work in any field of endeavor for which she was suited by age, education, and work experience. He further opined that appellant's care was palliative in nature.

On April 12, 2019 OWCP requested that Dr. Hawkins review Dr. Rohner report and indicate whether his previous opinion that appellant no longer had complex pain disorder or any psychiatric diagnosis related to her March 18, 1985 work injury had changed.

In an April 22, 2019 addendum report, Dr. Hawkins noted that he reviewed the updated SOAF and Dr. Rohner report. He reiterated his opinion that appellant has major depressive disorder, mild and chronic as a result of multiple nonwork-related medical illnesses and that she was psychiatrically capable of returning to work.

In a May 8, 2019 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals/disability causally related to her accepted March 18, 1985 employment injury. It advised her that the proposed action was based on the opinion of Dr. Hawkins and Dr. Rohner and afforded her 30 days to submit additional evidence or argument challenging the proposed action.

In a May 21, 2019 letter, Dr. Charles B. May, an osteopathic physician specializing in family practice, reported that appellant had chronic low back pain, for which she saw Dr. Batra for pain management, and Dr. Jerold Altman, a psychiatrist, but noted that he had not received recent reports from either physician. He reported her physical examination findings, noting that she ambulated with a wheeled walker and had exquisite lumbar tenderness throughout with very little active range of motion and had difficulty transitioning from sitting to standing and from standing to the examination table.⁵ Dr. May opined that appellant suffered from a chronic pain disorder, as allowed in the claim, and that she needed continued pain management and psychiatric treatment. He also opined that she was unable to work.

By decision dated June 18, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence was represented by the reports of Dr. Hawkins and Dr. Rohner.

On June 27, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. As of July 20, 2019 counsel no longer represented appellant. A telephonic hearing took place on November 7, 2019.

OWCP continued to receive evidence.

In an August 20, 2019 letter, Dr. May disagreed with the findings of Dr. Rohner that appellant's current disability was due to unrelated medical problems with her spine. He indicated that he was aware that she had osteoarthritis of the lumbar spine, as confirmed by a July 9, 2019 x-ray, but stated that the fact that there are expected degenerative changes in the spine did not mean that her pain was coming from those expected aging or degenerative changes. Rather, Dr. May opined that appellant's pain was psychological in nature and, thus, directly related to the allowed pain disorder in her claim, which was causing her permanent and total disability. He again noted that she was being treated by a pain management specialist and a psychiatrist for her chronic pain syndrome. In an August 20, 2019 progress report, Dr. May noted appellant's physical examination findings. He also noted that she reported that her psychiatrist recently passed away.

In an October 23, 2019 letter, Dr. Ronald Lakatos, a Board-certified orthopedic surgeon, noted the history of appellant's work injury. He indicated that diagnostic testing revealed degenerative spondylolisthesis at L4-5 and lumbar stenosis L4-5 with neurogenic claudication and requested that those conditions be added to her claim and surgical authorization be approved. Progress reports dated September 23 and October 23, 2019 were also submitted. Dr. Lakatos reviewed magnetic resonance imaging (MRI) scan images and reported that appellant had positive

⁵ Straight leg raising was reported as negative for sciatic tension and deep tendon reflexes in both lower extremities were 2/4 and equal bilaterally. No atrophy, motor or sensory loss in either lower extremity was detected and no ankle clonus was noted.

straight leg raise bilaterally with no focal motor deficits. He diagnosed lumbar stenosis with neurogenic claudication and degenerative spondylolisthesis at L4-5 with high-grade stenosis and discussed surgical options.

In a December 10, 2019 letter, Dr. Batra indicated that he had been seeing appellant for the past two years for her chronic lower back pain. He noted that she, on her initial visit, provided a history of her work injury. Dr. Batra opined that appellant's pain came from more than just a back sprain, noting that she had degenerative disc disease from L3-S1 levels as well as facet arthropathy. He concluded that, going by her history, her chronic intractable lower back and bilateral sciatica pain resulted from her 1985 work injury. In progress notes dated June 14, July 12, and August 14, 2019, Dr. Batra diagnosed sprain of other parts of the lumbar spine and pelvis and sciatica, unspecified side. He noted that appellant denied any new injury, the last MRI scan in 2016 showed multilevel degenerative changes, and she was receiving prescription opioid medications for chronic pain.

In a December 20, 2019 letter, Dr. Avneet Hira, a Board-certified psychiatrist, indicated that he had treated appellant since August 2019 for depression after her previous psychiatrist, Dr. Altman, passed away earlier that year. He noted that she reported that her depression related to her work injury and that she had been dealing with a lot of pain issues as well. Dr. Hira opined that appellant continues to experience depression and anxiety-related symptoms from which she was permanently and totally disabled.

Diagnostic testing received included February 23, 2016 MRI scan of lumbar spine, August 19, 2019 x-rays of thoracic spine, which noted degenerative changes, August 30, 2019 x-ray of lumbar spine, which noted grade 1 anterolisthesis of L4 and L5 and very minimal amount of anterolisthesis at L5-S1, September 19, 2019 lumbar spine MRI scan, noting grade 1 spondylosithesis of L4 on L5 and stenosis thecal sac, and narrowing of neural foramina at various levels, worst at L4-5.

By decision dated January 23, 2020, an OWCP hearing representative affirmed the June 18, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁶ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.⁷ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

⁶ S.P., Docket No. 19-0196 (issued June 24, 2020); D.G., Docket No. 19-1259 (issued January 29, 2020); S.F., 59 ECAB 642 (2008); Kelly Y. Simpson, 57 ECAB 197 (2005); Paul L. Stewart, 54 ECAB 824 (2003).

⁷ See S.P., id.; R.P., Docket No. 17-1133 (issued January 18, 2018); Jason C. Armstrong, 40 ECAB 907 (1989); Charles E. Minnis, 40 ECAB 708 (1989); Vivien L. Minor, 37 ECAB 541 (1986).

⁸ M.C., Docket No. 18-1374 (is sued April 23, 2019); Del K. Rykert, 40 ECAB 284, 295-96 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment. 10

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 18, 2019.

In his May 12, 2019 report, Dr. Rohner reviewed the latest SOAF and appellant's medical history and records. He reported that the significant findings on examination were due to aging. Dr. Rohner indicated that appellant's diagnoses of low back strain and complex pain disorder were no longer residuals of the accepted conditions, but were rather due to the aging phenomenon. He explained that there was no documentation in the records provided that would justify that residuals of a low back strain persisted for the past 34 years or indicate any other involvement in her age-related examination findings. Dr. Rohner further opined that appellant had no additional diagnoses that were caused, aggravated, accelerated, or precipitated by the March 18, 1985 work injury. He concluded that, based on her age-related medical examination findings, she was unable to work in any field of endeavor for which she was suited by age, education, and work experience. Dr. Rohner further opined that appellant's care was palliative in nature.

The Board finds that Dr. Rohner's opinion has reliability, probative value, and convincing quality with respect to whether appellant has any employment-related residuals or disability based upon his finding that her significant findings on examination were solely due to the aging phenomenon and not her work injury. Dr. Rohner provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided rationale for his opinion and reached a reasoned conclusion regarding the absence of employment-related disability or residuals of appellant's accepted conditions. 12

Dr. Hawkins, in his January 8, 2019 report, provided mental status examination findings and conducted appropriate psychological testing, which he opined that was invalid and consistent with exceptionally significant malingering as appellant had embellished all of her physical and psychological symptoms. He diagnosed chronic pain disorder and major depressive disorder, single episode, mild, and chronic. With regard to the chronic pain disorder, Dr. Hawkins found no evidence that appellant was depressed because of the 33-year-old industrial injury of lumbar strain and there were no psychiatric residuals as a result of the accepted injury. He explained that her recitation of her medical history did not match the SOAF information after the injury occurred, which was highly suggestive of malingering. Dr. Hawkins concluded that there were no psychiatric residuals as a result of the work injury and that appellant was capable of returning to

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⁹ J.W., Docket No. 19-1014 (is sued October 24, 2019); L.W., Docket No. 18-1372 (is sued February 27, 2019).

¹⁰ L.S., Docket No. 19-0959 (issued September 24, 2019); R.P., Docket No. 18-0900 (issued February 5, 2019).

¹¹ M.R., Docket No. 19-0518 (issued September 12, 2019); A.G., Docket No. 19-0113 (issued July 12, 2019).

¹² See J.N., Docket No. 20-1030 (issued November 20, 2020).

her former position without psychological restrictions. He further opined that the diagnosis of major depressive disorder, single episode, mild, and chronic was unrelated to the resolved physical work-related condition. Dr. Hawkins subsequently reviewed the updated SOAF and Dr. Rohner's opinion. He opined, in his May 12, 2019 report, that his earlier opinion was unchanged.

The Board finds that Dr. Hawkins based his opinion on a proper factual and medical history and mental status examination findings and provided medical rationale for his opinion that appellant did not have any psychiatric residuals as a result of the accepted injury and was capable of returning to her former position without psychological restrictions. Dr. Hawkins reviewed the latest SOAF and Dr. Rohner's report and found no evidence of psychiatric residuals as a result of the accepted injury. He explained that appellant's psychological testing was invalid and both the psychological testing and mental status examination were consistent with significant malingering as she had embellished all of her physical and psychological symptoms. Dr. Hawkins further opined that the diagnosis of major depressive disorder, single episode, mild, and chronic was unrelated to the resolved physical work-related condition. Thus, the Board finds that he provided a well-rationalized opinion based on medical evidence and his mental status examination regarding appellant's March 18, 1985 employment injury.¹³

The Board finds that the remaining contemporaneous medical evidence received prior to the termination of appellant's benefits is insufficient to overcome the weight of medical evidence given to the reports of Dr. Rohner and Dr. Hawkins. Dr. Batra continued to provide opioid pain management and continued to diagnose "sprain of other parts of lumbar spine and pelvis" and managed her pain medications. However, he did not address the issue of whether appellant continued to have residuals due to her accepted March 18, 1985 employment injury.¹⁴

In his May 21, 2019 report, Dr. May reported that appellant saw Dr. Batra for pain management of her chronic low back pain and Dr. Altman. He opined that she was totally disabled from a chronic pain disorder, as allowed in the claim, and that she needed continued pain management and psychiatric treatment. Dr. May failed, however, to provide rationale for appellant's conclusory opinion and his own findings to support the diagnosis or that the condition continued to be causally related to the 1985 employment injury.¹⁵

Accordingly, OWCP properly relied on the second opinion reports from Dr. Rohner and Dr. Hawkins in terminating appellant's wage-loss compensation and medical benefits for the March 18, 1985 employment injury. As such, their reports constitute the weight of the medical evidence.

¹³ *Id*.

¹⁴ See R.R., Docket No. 19-0173 (issued May 2, 2019); O.W., Docket No. 17-1881 (issued May 1, 2018).

¹⁵ See P.L., Docket No. 19-0268 (issued July 9, 2019).

¹⁶ See C.C., Docket No. 19-1062 (is sued February 6, 2020); S.M., Docket No. 18-0673 (is sued January 25, 2019); see also A.F., Docket No. 16-0393 (is sued June 24, 2016).

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to the accepted injury. ¹⁷ To establish causal relationship between the accepted conditions as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship. ¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after June 18, 2019 due to the accepted March 18, 1985 employment injury.

Subsequent to the termination of her wage-loss compensation and medical benefits, appellant submitted an August 20, 2019 letter from Dr. May. Dr. May indicated that he was aware that she had osteoarthritis of the lumbar spine, but stated that the fact that there are expected degenerative changes in the spine did not mean that her pain was coming from those expected aging or degenerative changes. Rather, he opined that appellant's pain was psychological in nature and, thus, directly related to the allowed pain disorder in her claim, which was causing her permanent and total disability. Dr. May, however, did not provide rationale to explain why her continuing disability was causally related to her accepted pain disorder. The Board has held that a mere conclusion without the necessary rationale as to whether a medical condition or disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof. ¹⁹ Dr. May's report is therefore of diminished probative value and insufficient to meet appellant's burden of proof to establish continuing residuals or disability. ²⁰

In an October 23, 2019 letter, Dr. Lakatos noted the history of the work injury and indicated in the letter, and in progress reports, that appellant had degenerative spondylolisthesis at L4-5 and lumbar stenosis L4-5 with neurogenic claudication. He requested that those conditions be added to her claim and surgical authorization be approved. Dr. Lakatos, however, did not address the issue of whether appellant's diagnosed conditions and need for continued treatment was due to her accepted March 18, 1985 employment injury.²¹ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.²² Thus, his reports are insufficient to meet appellant's burden of proof to establish continuing disability or residuals.

¹⁷ See J.N., Docket No. 20-1030 (issued November 20, 2020); L.C., Docket No. 18-1759 (issued June 26, 2019).

¹⁸ *Id*.

¹⁹ A.T., Docket No. 19-0410 (issued August 13, 2019); E.L., Docket No. 17-1632 (issued January 3, 2018).

²⁰ E.J., Docket No. 20-0013 (issued November 19, 2020); L.S., supra note 10.

²¹ *See R.R., supra* note 14.

²² See L.B., Docket No. 18-0533 (issued August 27, 2018); D.K., Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted several progress reports from Dr. Batra containing findings similar to those in his previously submitted progress reports with the additional condition of sciatica, unspecified side, diagnosed. In his December 10, 2019 letter, Dr. Batra indicated that he had been treating her for the past two years for her chronic lower back pain and that she, on her initial visit, provided a history of her work injury. He opined that appellant's pain came from more than just a back sprain, noting that she had degenerative disc disease from L3-S1 levels as well as facet arthropathy. Dr. Batra opined that, going by her history, her chronic intractable lower back and bilateral sciatica pain resulted from her 1985 work injury. He did not, however, provide any rationale for his causation finding and thus his opinion is of little probative value.²³

In a December 20, 2019 letter, Dr. Hira indicated that he had treated appellant since August 2019 for depression, which she related to her work injury and pain issues. While he opined that she continued to experience depression and anxiety-related symptoms from which she was permanently and totally disabled, he did not address the issue of whether her depression and anxiety-related symptoms and resultant disability was due to her accepted March 18, 1985 employment injury.²⁴ Thus, Dr. Hira's opinion is of diminished probative value and insufficient to meet appellant's burden of proof to establish continuing residuals or disability.²⁵

While the multiple diagnostic testing reveals multiple back conditions, the Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.²⁶

Appellant has not submitted rationalized medical evidence sufficient to establish employment-related disability or residuals on or after June 18, 2019 due to accepted employment-related conditions. As such, the Board finds that she has not met her burden of proof.²⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § § 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 18, 2019. The Board further finds that she has

²³ A.T., Docket No. 20-0334 (issued October 8, 2020) (a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale).

²⁴ See R.R., supra note 14.

²⁵ See E.J., supra note 20.

²⁶ R.C., Docket No. 19-0376 (issued July 15, 2019).

²⁷ *Id*.

not met her burden of proof to establish continuing employment-related disability or residuals on or after June 18, 2019 due to her accepted March 18, 1985 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2021 Washington, DC

Janice B. Askin, Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board